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Chair: Mr. Fathalla (Vice-Chair)

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Mr. Fathalla (Vice-Chair) took the Chair.

The meeting was called to order at 10.10 a.m.

Organizational and other matters, including the adoption of the report of the Working Group on Communications

Draft general comment No. 36 on article 6 of the Covenant (Right to life) (continued) (CCPR/C/GC/R.36/Rev.7)

1. **The Chair** invited the Committee members to resume their discussion of paragraph 67 of the revised draft general comment (CCPR/C/GC/R.36/Rev.7).

Paragraph 67 (continued)

2. **Mr. Shany** (Rapporteur) said that, in the light of the views of members regarding the reference to avoiding or minimizing the collateral death of civilians, it might be advisable to use more general wording in the last part of the fourth sentence. He therefore suggested that it should read, "failure to apply the principles of precaution and proportionality". They would thus simply be making it clear that a practice which violated the international humanitarian law principles of precaution and proportionality in that context would ipso facto constitute an arbitrary deprivation of life. That was not to say that all practices that were consistent with the former would necessarily be consistent with human rights law.

3. The fifth sentence raised the issue of compelling security considerations in relation to the disclosure of the criteria for mounting an attack. Several States had criticized the Committee's approach, which, in fact, had been framed on the basis of its concerns regarding isolated attacks by States. However, as it stood, the sentence would also encompass assaults conducted within the scope of large-scale hostilities, where, as a number of States had pointed out, disclosure of any specific targeting decision would be entirely unfeasible. It would therefore be wise to use the broader phrase "where possible" in order to acknowledge that there could be circumstances in which it would be impracticable for States to disclose that type of information.

4. **Ms. Cleveland** said that replacing the phrase "subject to compelling security considerations" with the wording proposed by the Rapporteur would allow States too wide a margin of discretion when deciding whether to make their targeting standards known. As the Committee had clearly taken a more restrictive position, she would prefer a stronger formulation.

5. **Mr. Politi** said that he welcomed the clarification that not all instances of the use of force that were consistent with international humanitarian law were ipso facto compatible with article 6. He was, however, worried that the phrase "where possible" might open the door to an excessive number of exceptions, and he was therefore not in favour of its introduction.

6. **Mr. Heyns** said that the expression "where possible" was too subjective and offered States no guidance. One solution might be to retain the phrase "subject to compelling security considerations" and to add "and where possible".

7. **Mr. Shany** said that there were three possible alternatives to "where possible", namely "in principle", "unless prevented from doing so" or "should disclose". He would be interested to hear members' views on those options, all of which made it plain that there had to be very good reasons for departing from the default position. Personally, he would prefer "unless prevented from doing so".

8. **Mr. Politi** said that autonomous weapons controlled by artificial intelligence would be excluded from the ambit of that paragraph if the phrase "where possible" were retained.

9. **Ms. Cleveland** said that a fourth option, which would tip the balance towards disclosure, would be to say "States parties should in general disclose".

10. **Mr. Shany** said that, in the final analysis, he was in favour of Ms. Cleveland's proposal, since it met States parties' concerns while retaining the Committee's principled approach.

11. **Mr. Heyns** said that the final sentence in the paragraph raised the issue of constructive knowledge. The sentence, as it stood, referred to allegations of violations of article 6. When dealing with, for example, war crimes, however, it was a question not only of allegations but also of cases where States should have known that such crimes were being committed. In view of the fact that paragraph 21 of the Minnesota Protocol referred to situations where there were reasonable grounds to suspect that a war crime had been committed, he proposed changing "allegations of" to "suspected". The relevant footnote should be corrected to refer to paragraphs 20 and 21 of the Protocol.

12. **Mr. Shany** said that "allegations of" could be changed to "alleged or suspected" to cover the whole gamut of possibilities, and the footnote could certainly be adjusted.

13. *Paragraph 67, as amended, was adopted.*

Paragraph 68

14. **Mr. Shany** said that paragraph 68, concerning the applicability of article 6 in states of emergency, used language which generally followed the wording used in general comment No. 35 on article 9 (Liberty and security of persons) (CCPR/C/GC/35). The Government of the United States of America had made a number of constructive proposals, namely, that it should be made clear that the fundamental guarantees in question continued to apply in any circumstances within the Covenant's scope of application and that a reference to armed conflict as an example of a public emergency should be added. On the other hand, it had taken issue with the references to due process in the last sentence of the paragraph on the grounds that States had discretion as to how to protect people's rights. The Committee was not, however, suggesting anything to the contrary. State discretion nonetheless had to be exercised within the constraints of the non-derogable elements of the Covenant, including due process guarantees for the protection of the right to life.

15. Amnesty International had proposed strengthening the last sentence to underscore the fact that the rights set forth in the final sentence were procedural guarantees, but it disliked the use of the adjective "fundamental" because it seemed to denote a hierarchy of rights. In order to accommodate those suggestions, he therefore proposed that the first two sentences of the paragraph should read: "Article 6 is included in the list of non-derogable rights of article 4, paragraph 2, of the Covenant. Hence, the guarantees against arbitrary deprivation of life contained in article 6 continue to apply in all circumstances, including in situations of armed conflict." He further proposed that the final sentence should read: "Such rights include procedural guarantees such as the right to fair trial in death penalty cases and accessible and effective measures to vindicate rights such as the duty to take all appropriate measures to investigate, prosecute, punish and remedy violations of the right to life."

16. **Mr. Heyns** said that perhaps the last part of the second sentence should refer to public emergencies rather than armed conflicts.

17. **Mr. Shany** said that, as an armed conflict could be an example of a state of emergency, the phrase in question could be recast to read, "including in situations of public emergency and armed conflict".

18. **Ms. Cleveland** said that the additional wording proposed by the Rapporteur might suggest that the Committee was saying that public emergencies did not encompass armed conflict.

19. **Mr. Shany** proposed reversing the order of the phrase to "including in situations of armed conflict and other public emergencies".

20. *Paragraph 68, as amended, was adopted.*

Paragraph 69

21. **Mr. Shany**, noting that paragraph 69 dealt with the question of reservations to article 6, said that, while Amnesty International supported the paragraph, the Government of Canada had requested the removal of the reference to the peremptory nature of the obligations in question on the grounds that the term should be reserved for peremptory norms of customary international law. In his opinion, however, the Committee should retain that reference to *jus*

cogens, since it was a core element of the object and purpose of article 6. The Government of the United States of America had expressed doubts about the Committee's approach to reservations. It also had some objections with regard to procedural aspects of *jus cogens* norms. In the light of those comments, he proposed a slight rephrasing of the second half of the first sentence to read, "with respect to the peremptory and non-derogable obligations set out in article 6", which would not dilute the protection afforded under that article.

22. **Mr. Ben Achour** said that, in the French version of the text, the phrase "*limites strictes fixées à l'article 6*" ["the strict limits provided in article 6"] gave the erroneous impression that article 6 codified the conditions under which States could make reservations, which was, of course, not at all the case.

23. **Mr. Politi** said that he concurred with the reformulation of the first sentence and shared the previous speaker's concerns with regard to the second sentence of the paragraph.

24. **Mr. Zimmermann** said that the conditional tense of the first verb in the first sentence made the statement sound tentative; it would be better to state that "Reservations with respect to article 6 are incompatible with the object and purpose of the Covenant ..." in order to cover any possible past reservations.

25. **Mr. Shany** said that reservations to article 6 were not a hypothetical issue, as the United States of America had entered a number of such reservations.

26. **Ms. Cleveland** said that the meaning of the second sentence might be brought out more clearly by deleting "in particular" and by wording that sentence to read: "No reservation may be made to the prohibition against arbitrary deprivation of life of persons or to the strict prohibition ...".

27. **Mr. Heyns**, referring to the first sentence, said that he welcomed the Committee's cautious approach to *jus cogens*, as the International Law Commission was considering that topic and might or might not decide that all aspects of the right to life were protected by peremptory norms.

28. **The Chair**, speaking as a member of the Committee, said that Mr. Ben Achour's concerns with respect to the second sentence, which he shared, would be solved by Ms. Cleveland's proposal.

29. **Mr. Heyns** said that he agreed with the deletion of "in principle" in the second sentence and felt that the words "nor to" should be replaced with "including" in order to avoid any suggestion that a death penalty applied outside the strict limits set by article 6 might not be deemed arbitrary.

30. **Mr. Politi** said that "in particular" might be construed to mean that the cases referred to in that sentence were the only ones where reservations were inadmissible, whereas it was vital to indicate that reservations were not permissible in a number of other instances. He was uncertain that the wording proposed by Mr. Heyns made that plain.

31. **Mr. Shany** said that he was in favour of retaining the phrase "in particular" as it indicated that the list was illustrative rather than exhaustive, although he agreed with Ms. Cleveland that the focus should be on prohibiting any reservation that would to beyond the strict limits to the application of the death penalty provided for in article 6. Although he was not opposed to Mr. Heyns's proposal, those strict limits did not derive solely from the notion of arbitrary deprivation of life, but also from other clauses in article 6. He therefore proposed that the text should read: "In particular, no reservation may be made to the prohibition against arbitrary deprivation of life of persons and to the strict limits provided in article 6 with respect to the application of the death penalty."

32. **Mr. Ben Achour** said that the second sentence encompassed two independent precepts: first, that no reservation could be made to the prohibition on the arbitrary deprivation of life of persons, and, second, that the death penalty could be applied only within the limits set by article 6. For that reason, it might be wise to divide that sentence into two separate sentences.

33. **Mr. Heyns** said that he agreed with the wording proposed by the Rapporteur, since the aim of the sentence was to refer to the two specific types of reservations.

34. **Mr. de Frouville** said that, in the French version, the problem could be solved by reversing the order of the two elements in the sentence so that it said that a reservation could not be made to the prohibition against arbitrary deprivation of life or to the strict limits on the application of the death penalty provided in article 6. In the French version, then, the sentence would read: "*En particulier, une réserve ne peut être formulée à l'égard de l'interdiction de la privation arbitraire de le vie et aux limites strictes qui sont fixées par l'article 6 à l'application de la peine de mort.*"

35. **Mr. Zimmermann** suggested that the sentence should state that "no reservation is permissible to the prohibition".

36. **Mr. Shany** proposed that the sentence should read: "No reservation to the prohibition against the arbitrary deprivation of life of persons and to the strict limits provided in article 6 with respect to the application of the death penalty is permissible."

37. *Paragraph 69, as amended, was adopted.*

Paragraph 70

38. **Mr. Shany** said that paragraphs 70 and 71 should be read together, as paragraph 70 was an introduction to paragraph 71, which dealt with the connection between the right to life and the Covenant, on the one hand, and efforts to outlaw war, on the other. Although the Committee had not addressed that issue in its concluding observations on individual States' reports, the matter was addressed in general comment No. 14 on the right to life and was part of the ideological foundations on which the whole human rights corpus was built. War was the ultimate threat to the right to life.

39. A few comments had been received on what was, in essence, an exhortative statement. The Government of Canada had requested the deletion of the paragraph because it did not consider that the Committee should deal with questions of peace and security. The Government of the United Kingdom had expressed surprise at what it felt was an unhelpful inclusion of such an aspirational paragraph in a general comment and recommended that the latter should end at paragraph 69. However, if the Committee were to act upon that recommendation, it would deprive the general comment of an element that played a vital role in situating the Covenant within the international peace and security architecture.

40. A number of NGOs had requested the inclusion of specific references to international crimes under the Rome Statute, environmental degradation, forced displacement and other human tragedies. He doubted, however, that the inclusion of those elements would be appropriate, as the focus should be on the relationship between wars and armed conflict, on the one hand, and the right to life, on the other. He therefore was not proposing any amendments to the paragraph.

41. **Ms. Kran** said that she was in favour of retaining the paragraph. It clearly operated at a different level than some of the other paragraphs, in that it was an overarching statement which established an important link. For that reason, the Committee would be remiss if it did not include it. She would, however, suggest the deletion of the phrase "loss of the life of many thousands of innocent human beings" and its replacement with the more succinct wording "the loss of many thousands of lives every year", as innocence was irrelevant in that context.

42. **Mr. Heyns** said that he agreed with the retention of the paragraph. A document such as a general comment had to situate a foundational right within a wider context. He also concurred with Ms. Kran's proposal, since it might be difficult to establish what was meant by "innocent". He queried the inclusion of the word "guarantees", as it seemed rather optimistic to think that efforts to avert the risk of war could guarantee anything.

43. **Ms. Cleveland** said that she supported the inclusion of the paragraph and noted that the issue which it dealt with was also the leading point made in paragraph 2 of general comment No. 35. She could certainly accept Ms. Kran's proposal; the reason that the word "innocent" had originally been included was to distinguish between the deaths of innocents and non-arbitrary deaths occurring in the context of war that were not a violation of article 6. However, any war would also cost lives in ways that were indeed in violation of article 6.

44. **Mr. Politi** said that he was in favour of the reformulation proposed by Ms. Kran and could agree to the deletion of "guarantees", in the second sentence, in view of the qualms expressed by Mr. Heyns. Perhaps it would be preferable to say that efforts to avert war "are among the most important conditions for safeguarding the right to life", as there were no doubts on that score.

45. **Mr. Shany** said that the first sentence had been taken almost literally from general comment No. 14, while the second sentence had been drawn almost word for word from general comment No. 6 on the right to life. It might indeed be safer to delete the word "innocent" owing to the possibility that, in war, the enemy might be considered to include civilians who supported the regime, although any suggestion that non-combatants did not have the right to life was to be avoided. He agreed with Mr. Politi's proposal.

46. **The Chair**, speaking as a member of the Committee, suggested that, at the end of the second sentence, the phrase "conditions and guarantees for safeguarding the right to life" could be replaced with "conditions and safeguards for the right to life".

47. **Mr. Shany** said that perhaps the best formulation would be "the most important safeguards for the right to life".

48. *Paragraph 70, as amended, was adopted.*

Paragraph 71

49. **Mr. Shany** said that paragraph 71 pertained to the interplay between *jus ad bellum* and the right to life. A number of States had expressed misgivings about that approach and about the Committee possibly envisioning itself as a body that could quasi-adjudicate issues of war and peace. He did not believe that the Committee had any such intention. At the same time, however, when the Committee interpreted the Covenant, it had to be mindful of other international legal instruments. In that connection, it should also be noted that the advisory opinion on *Legality of the Threat or Use of Nuclear Weapons* of the International Court of Justice was frequently cited in support of the parallel application of the Covenant and other sources of international law. It was important to signal that the criteria associated with *jus ad bellum* could also inform the interpretation of the Covenant.

50. The Government of Canada had proposed the deletion of the paragraph for the same reason as it had given in respect of paragraph 70. While the Government of France was not opposed to the Committee discussing that matter, it took the view that the paragraph was too broadly drafted because it excluded the right to self-defence. The Government of the United Kingdom was of the view that the Committee was overstepping its mandate. The Government of the United States of America also felt that the Committee was exceeding its mandate by dealing with a matter having an extraterritorial dimension regulated by *jus ad bellum* which fell within the realm of the Security Council.

51. Ultimately, the position of the Committee was that it was interpreting the Covenant in accordance with article 31 (3) (c) of the Vienna Convention on the Law of Treaties and customary international law. However, it also acknowledged that *jus ad bellum* was the more specific body of law in that respect and that the Covenant's application was complementary.

52. The NGO Al-Haq had proposed the inclusion of a reference to States' responsibility to prevent attacks on the right to life and the removal of the reference to international terrorism from the list of examples on the grounds that the definition of that term was sometimes misused by States. He was not be in favour of acting upon either of those proposals because, in the former case, he was not sure that the Committee would be on sufficiently solid ground to do so and, in the latter instance, because it was necessary to produce a balanced text which took account of States' substantial concerns about international terrorism. On the other hand, Al-Haq's suggestion that reference should be made to genocide and war crimes could, he believed, be accommodated.

53. In the light of those and other comments, he proposed that paragraph 71 should read in the following manner:

> States parties engaged in acts of aggression contrary to the Charter of the United Nations resulting in deprivation of life violate ipso facto article 6 of the Covenant.

Moreover, States parties that fail to take all reasonable measures to settle their international disputes by peaceful means so as to avoid resort to the use of force might fall short of complying with their positive obligation to ensure the right to life. At the same time, all States are reminded of their responsibility as members of the international community to protect lives and to oppose widespread or systematic attacks on the right to life, including acts of aggression, international terrorism, genocide, crimes against humanity and war crimes, while respecting all of their obligations under the United Nations Charter.

54. **The Chair** said that he took it that the Committee members did not support the requests received from the Governments of Canada and the United States of America to remove paragraph 71 from the general comment. He therefore suggested that the Committee should consider the Rapporteur's proposed amendments to the paragraph sentence by sentence.

55. **Mr. Politi** said that the words "contrary to the United Nations Charter" should be removed from the first sentence of the paragraph, since no act of aggression by a State could ever be consistent with the Charter of the United Nations. There was a risk that the wording in question would be misinterpreted to suggest that acts of aggression existed that were not contrary to the Charter.

56. **The Chair**, speaking as a member of the Committee, said that the term "acts of aggression" in the first sentence was not consistent with the language used in the Charter. If the Committee wished to make a connection between the Covenant and Article 2 of the Charter, it should be careful to use language that was in line with the latter. There were references to the peaceful settlement of disputes and the non-use of force in Articles 2 (3) and 2 (4), but there was no mention of aggression.

57. **Mr. Shany** said that the selection of terminology to refer to aggressive conduct on the part of States was somewhat problematic because the language used in the Charter was not consistent in that area. For example, there were references to the use of force, acts of aggression and armed attack in Articles 2, 39 and 51, respectively. The term "acts of aggression" had been used in paragraph 71 of the draft general comment because it was thought to be accessible to the lay reader. The definition of the use of force was open-ended, as, according to some interpretations, it could refer to economic or diplomatic force as well as military force. To his mind, the notion of aggression — as used by the Rome Statute of the International Criminal Court — was more appropriate.

58. The argument for removing the reference to the Charter of the United Nations from the first sentence was a strong one. There was a certain amount of controversy associated with the obligations set out in Article 2 (4) and the question of how they applied to relations between State and non-State actors. It might therefore be best to avoid associating the general comment with that provision. However, it was still important to link the paragraph to a normative framework. He therefore proposed that the words "contrary to the United Nations Charter" should be replaced with "as defined in international law".

59. **Mr. Ben Achour** said that he was happy with the first sentence of the paragraph. However, certain elements of the second and third sentences, including the references to the Charter and the peaceful settlement of disputes, fell outside the Committee's jurisdiction. The Committee should not lose sight of the aim of its general comments, which was to summarize the Committee's jurisprudence on a given area covered by the Covenant. He therefore proposed that the second and third sentences of the paragraph should be deleted and that the first sentence should be moved to the end of paragraph 70.

60. **Mr. Santos Pais**, supporting both of the proposed amendments to the first sentence, said that he was in favour of retaining paragraph 71 because it served an important purpose in positioning the general comment within the context of international law. Although acts of aggression by States did not necessarily fall within the Committee's jurisdiction, they might have an impact on the application of the Covenant and States parties' fulfilment of their Covenant obligations. It was important for the Committee to clarify both how the Covenant interacted with different areas of international law and why the Committee had the competence to act in certain situations.

61. **Ms. Cleveland** said that she agreed that there was enough overlap between paragraphs 70 and 71 for the Committee to consider merging them. To her mind, the Committee would be well-advised to avoid becoming embroiled in any debates over what constituted an unlawful act of aggression. For that reason, she also supported replacing the words "contrary to the United Nations Charter" with "as defined in international law" in the first sentence.

62. **Mr. de Frouville** said that he supported the proposed amendments to the first sentence and that he shared Ms. Cleveland's views concerning the need to establish a broad legal basis for the definition of the term "aggression". In his opinion, paragraphs 70 and 71 should be kept separate from one another. While paragraph 70 dealt with general efforts made by States to avoid war, paragraph 71 referred to their obligations to settle disputes peacefully in line with the broader provisions of international law.

63. **Mr. Zimmermann** said that he supported the proposed amendments to the first sentence. However, the second sentence appeared to reiterate what had been expressed in the last sentence of paragraph 70 concerning efforts to avert the risks of war and to strengthen international peace and security. The Committee might therefore consider removing that sentence from paragraph 71.

64. **Mr. Heyns** said that he supported the adoption of the paragraph, subject to the amendments proposed by the Rapporteur. Paragraph 71 set out, in a logical manner, the obligations of States parties regarding their own use of aggression, their use of positive measures to settle international disputes and to counter external aggression, and their responsibility to protect people's lives.

65. **The Chair** said that he took it that the Committee agreed to the proposed amendments to the first sentence of paragraph 71, by which the words "contrary to the United Nations Charter" would be replaced with the following formulation: "as defined in international law".

66. **Mr. Shany** said that he did not agree that the second and third sentences of the paragraph should be removed, as proposed by Mr. Ben Achour. He supported Mr. de Frouville's view that paragraphs 70 and 71 were both important in their own right. Paragraph 70 provided a conceptual basis for the connection between article 6 of the Covenant and acts of mass violence, while paragraph 71 focused on the legal implications that arose from that connection.

67. The second sentence of paragraph 71 specifically referred to Article 2 (3) of the Charter. The reason for the only change to the sentence that he had proposed was that any causative link between the measures taken to promote peaceful resolution and a specific instance of loss of life would be very hard to establish. By using the formulation "might fall short in complying", the Committee would nonetheless be acknowledging that there could be a link between a failure to take reasonable steps to settle disputes peacefully and a failure to fulfil the positive obligation to ensure the right to life.

68. **Mr. Ben Achour** said that he found the second sentence of paragraph 71 particularly problematic. The obligation of States to take measures to settle international disputes by peaceful means was a very general one that did not necessarily have an impact on their obligation, under article 6 of the Covenant, to ensure the right to life. Moreover, the third sentence simply went over ground that had already been covered elsewhere in the general comment. It was for those reasons that he had proposed that both sentences should be removed.

69. **The Chair**, speaking as a member of the Committee, said that the second sentence did serve an important purpose in clarifying that the peaceful settlement of disputes and the use of force were not entirely separate concepts. The sentence linked the two by demonstrating that, by taking measures to settle international disputes by peaceful means, States could avoid resorting to the use of force.

70. **Mr. Shany** said that the proposed amendment to the second sentence would address Mr. Ben Achour's concern about the nature of the causal link between the peaceful settlement of disputes and ensuring the right to life. Although he preferred to retain the sentence, the paragraph would still make sense if the Committee wished to remove it.

The meeting was suspended at 11.55 a.m. and resumed at 12.10 p.m.

71. **Mr. Politi** said that the Committee might wish to consider switching the order of the second and third sentences in paragraph 71. There was a clear connection between the first sentence, which dealt with acts of aggression that resulted in the deprivation of life, and the third sentence, which made reference to a State's responsibility to oppose widespread or systematic attacks on the right to life. It therefore made sense to position them side by side. If the third sentence were to be brought forward, he would then propose that the term "acts of aggression" should be removed from it in order to avoid its repetition.

72. **Mr. Heyns** said that the existing structure of the paragraph seemed logical to him. The first sentenced linked Article 2 (4) of the Charter to the right to life and the second established the link between that right and Article 2 (3) of the Charter. The third sentence was more general. He therefore supported the adoption of the paragraph with its present structure, subject to the amendments proposed by the Rapporteur.

73. **The Chair**, speaking as a member of the Committee, said that the first sentence was not, in fact, connected to Article 2 (4) because it did not address the concept of the non-use of force. The second sentence did, however, reflect Article 2 of the Charter. He supported Mr. Politi's proposal to switch the order of the second and third sentences in order to group the references to international law at the start of the paragraph.

74. **Mr. Shany** said that an act of aggression necessarily entailed the use of force. Even though the term "aggression" did not explicitly appear in Article 2 (4), a link did therefore exist between that provision of the Charter and the first sentence of paragraph 71. The intended logic of the paragraph was as Mr. Heyns had described it. However, it was also true that the first and third sentences dealt with the use of force, whereas the second sentence concerned the peaceful settlement of disputes. He therefore supported the suggestion made by Mr. Politi to change the order of the sentences, as the proposed reordering would help to address the concerns raised by Mr. Ben Achour. If the Committee supported the proposal to replace the reference to the Charter of the United Nations in the first sentence with the words "as defined in international law", the same substitution should also be made in the third sentence. With regard to Mr. Politi's other comment, he would suggest that the term "acts of aggression" should nonetheless be retained in the sentence because it dealt specifically with the responsibility of States parties to oppose such conduct by other States. The terms "genocide" and "war crimes" should also be retained in order to align the wording with the language used in the Rome Statute.

75. **Ms. Cleveland**, supported by **the Chair**, said that she proposed that the words "by others" should be inserted after "widespread or systematic attacks on the right to life". The addition would help to clarify the parameters of the positive obligation of States alluded to in the sentence.

76. **Mr. de Frouville**, supported by **Mr. Ben Achour**, said that he was unsure whether such an addition was appropriate, as the obligation of States parties included their duty to protect against attacks on the right to life that originated and took place on their own territory.

77. **Mr. Shany** said that he agreed with Mr. de Frouville's analysis. Rather than making the addition suggested by Ms. Cleveland, it might be best to define the nature and parameters of a State's responsibility to protect its population by inserting a footnote referring to paragraph 139 of the 2005 World Summit Outcome (A/RES/60/1).

78. **The Chair** invited the Rapporteur to read out the amended draft of paragraph 71.

79. **Mr. Shany** said that the new text would then read:

> States parties engaged in acts of aggression as defined in international law resulting in the deprivation of life violate ipso facto article 6 of the Covenant. At the same time, all States are reminded of their responsibility as members of the international community to protect lives and to oppose widespread or systematic attacks on the right to life, including acts of aggression, international terrorism, genocide, crimes against humanity and war crimes, while respecting all of their obligations under international law. States parties that fail to take all reasonable measures to settle their international disputes by peaceful means might fall short of complying with their positive obligation to ensure the right to life.

80. **The Chair** said he took it that the Committee members wished to adopt the amended draft of paragraph 71, as read out by the Rapporteur.

81. *Paragraph 71, as amended, was adopted.*

82. **Mr. Shany** said that, over the course of the drafting process, a number of suggestions had also been made regarding changes to the order of the paragraphs and small rectifications to the text. Following careful consideration of the former, he proposed the following changes: paragraph 8 should be placed after paragraph 61, since it contained references to a number of different articles of the Covenant; paragraphs 11 and 14 should be placed after paragraph 19 in order to group together all the provisions dealing with the use of force by States; and paragraphs 12 and 13 should be placed after paragraph 67 because the references to the development of weapons and weapons of mass destruction would fit better in section V.

83. As far as minor rectifications to the text were concerned, in addition to a number of grammatical corrections that had been brought to his attention, he proposed the following modifications: in paragraph 11, the words "or abuses" should be inserted after "human rights violations", since "human rights abuses" was the term used by the United Nations when referring to private actors; in paragraph 27, the words "street children" should be replaced with "children in street situations" to bring the terminology into line with current United Nations usage; in paragraph 42, the order of the sentences should be switched for the sake of clarity; in the first sentence of paragraph 45, the word "could" should be replaced with the word "would" in order to bring the provision into line with the stance adopted in section III, which stated that violations of the Covenant that resulted in the imposition of the death penalty or in loss of life necessarily rendered the deprivation of life arbitrary; in paragraph 46, the words "leading to the imposition of the death penalty" should be inserted after the reference to the Vienna Convention on Consular Relations, and the words "can violate" should be replaced by "would violate" in order to emphasize the issue of causation; and in paragraph 56, the words "disproportionate nature of the punishment" should be replaced by "extreme nature of the punishment" in order to avoid diluting the absolute nature of the violation of article 7 discussed in that paragraph.

84. **The Chair** said he took it that the Committee had no objections to the rectifications proposed by the Rapporteur.

85. **Mr. Heyns** said that he had a concern about the following formulation in paragraph 14 on the use of less-lethal weapons: "the use of such weapons must be restricted only to law enforcement officials". To his mind, the text should not exclude the possibility that private individuals might carry pepper sprays or other such weapons for the purpose of self-defence. The sentence should be reformulated with that concern in mind; he also proposed that the term "less-lethal" should be deleted from the last sentence of the paragraph.

86. **Mr. Ben Achour** said that he would like to know whether the third sentence in paragraph 68 had been amended. As it stood, the sentence was not clear and risked giving rise to multiple interpretations.

87. **Mr. Shany** said that he was not inclined to make any new amendments. The weapons referred to in paragraph 14 were devices, such as taser guns, whose use was restricted to law enforcement officers who had undergone specific training. The issue of private individuals carrying weapons for the purpose of self-defence was therefore not relevant. Furthermore, the Committee had discussed the language used in the paragraph at length and had decided to retain the term "less-lethal" in the last sentence. With regard to the third sentence in

paragraph 68, he was loathe to make any changes, as the formulation in question had been taken from general comment No. 35. As currently worded, the phrase referred to the fact that a situation of public emergency could have an impact on a State party's application of the right to life. It thereby served as a means for the Committee to inform States parties that, even though it expected them to meet their obligations under the Covenant, it was not blind to the realities that they confronted.

88. **The Chair** said that he did not wish to reopen the debate on paragraphs that had already been adopted. If members wished to place their interpretation of any of the paragraphs on record, they would have the opportunity to do so at the next meeting on the general comment.

89. **Mr. Ben Achour** said that, since official French and Spanish versions of the text would not be available by the time of the next meeting, it was important to note that the Committee was adopting the English text of the general comment; once the general comment had been translated into the other United Nations languages, the Committee members who used those languages as their working languages would have to have the opportunity to review the wording of those versions in order to check for any inaccuracies or inconsistencies with the English version.

90. **Mr. Shany** said that, in any case, the Committee would not adopt the text at the next meeting since the English-language text of the general comment had already been adopted, paragraph by paragraph. The meeting would therefore be set aside for any statements that Committee members wished to make with regard to their positions on the issues covered in general comment No. 36 and a discussion on the subject of the Committee's next general comment.

The meeting rose at 1 p.m.